

In Re Clyne,
Del. Supr., 581 A.2d 1118 (1990)

Disciplinary Rules: DLRPC 1.3, 3.4(c), 8.1(b), 8.4(c)

Nature of Case:

The Board on Professional Responsibility found:

- (1) In one instance of professional misconduct, Respondent failed to act with reasonable diligence and promptness in representing a client, in violation of DLRPC 1.3, when he failed to file an answering brief on a summary judgment motion, or to contact the attorney who had been working with him on the case. 581 A.2d at 1120.
- (2) In another instance of professional misconduct, Respondent "again failed to file a timely answering brief for his client and then made numerous misrepresentations to the Court in an attempt to cover up that failure", violating of DLRPC 1.3, 3.4(a), and 8.4(c). Id.
- (3) Respondent was transferred to disability inactive status following his enrollment in June 1988 for a month-long treatment in an alcohol abuse facility. Id. at 1122. On September 7, 1988, he appeared before the Supreme Court seeking a transfer back to active status. Id. He misrepresented to the Court, in violation of DLRPC 8.4, that he had not had any alcohol since his stay in the treatment center. Id. In fact, he had consumed several beers the night before his hearing, and was later forced to admit his misrepresentation when a former colleague threatened to disclose it if he did not. Id.
- (4) On September 7, 1988, the Disciplinary Counsel requested Respondent's financial records relating to fiduciary and nonfiduciary accounts. Id. Respondent did not produce the records until mid-December 1988. Id. The Board found this three-month delay to be in violation of 8.1(b). Id.

"Although he did not dispute the facts presented to the Board, [Respondent] raised three issues as mitigating factors: (1) his youth and inexperience, (2) the fact that his clients suffered no actual harm from his behavior, and (3) his drinking problem." Id. The Board refused to accept the first two factors, and concluded that "his drinking problem did not excuse his actions". Id. The Board emphasized the fact that Respondent made misrepresentations to the Supreme Court after his stay in the treatment center. Id. at 1123.

Action Taken by the Court:

The Supreme Court agreed with the basic concept that alcoholism could be a mitigating circumstance in some cases, but stated that each case turned on its own facts, and that "[n]o court ... has held that alcoholism categorically must be considered a mitigating factor in attorney disciplinary proceedings". Id. at 1124. The Court did not adopt any of the judicial tests developed by various courts to determine whether alcoholism should be a mitigating factor because it found that Respondent's alcoholism "should not be considered a mitigating factor under any set of criteria". Id. at 1125. The Court held that "[u]nder the circumstances, [Respondent's] numerous deceptions to this Court, some exceptionally contrived, are not mitigated by the fact that he was or is an alcoholic, for he has failed to show that his dependency caused his repeated ethical transgressions." Id. Without fundamental proof that alcoholism was the cause of Respondent's dishonesty or that Respondent had been completely rehabilitated, the Court did not find alcoholism to be a mitigating factor in this case. Id. at 1127.

Disbarment ordered.